

REMARKS

By this amendment, claims 1-25 are pending, in which no claims are canceled, withdrawn from consideration, currently amended, or newly presented. No new matter is introduced.

The Final Office Action mailed October 15, 2009 rejected claims 1-22 and 24 as obvious under 35 U.S.C. § 103 based on *Duske, Jr. et al.* (US 6,992,991) in view of *Hanson et al.* (US 2003/0120811), and claims 23 and 25 as obvious under 35 U.S.C. § 103 based on *Duske, Jr. et al.* (US 6,992,991) and *Hanson et al.* (US 2003/0120811) in view of *Klein* (US 6,178,523).

The rejection of claims 1-22 and 24 under 35 U.S.C. § 103 is respectfully traversed for the reasons set forth in the previous response. The Examiner is respectfully requested to reconsider the rejection in view of the following comments.

A. The Final Office Action asserts that Applicants' argument, concerning *Hanson et al.* not being directed to the same type of priority and data structures claimed because it relates to mobile devices, is not persuasive because Applicants have not claimed more than "a telemetry device."

Applicants do not gainsay that a mobile device may be read as a "telemetry device." Rather, Applicants' point was that *Hanson et al.* relates to maintaining a connection between mobile devices in situation where a Mobile End System may become unreachable, or network addresses change, e.g., due to roaming. In such a case, the Mobility Management Server (MMS) maintains a continuous connection by maintaining the state of Mobile End Systems. Thus, *Hanson et al.* is concerned with **maintaining connections to applications** to which the mobile devices may be connected. Whereas the instant claimed subject matter is directed to the "transmission of **messages**," *Hanson et al.* is not directed to the "transmission of **messages**," per se (other than indirectly maintaining a connection so that messages may reach their intended

destination), or to the determination of whether first and second **information elements** include a first and second priority level indication, respectively.

B. The Final Office Action responds to Applicants' argument that *Hanson et al.* is not directed to the "transmission of **messages**," by citing paragraph [0030] of the reference. That paragraph does recite that a "protocol generates transactions into messages" and that "RPC messages contain the entire network transaction initiated by an application running on the Mobile End System."

However, these "messages" of *Hanson et al.* are not transmitted based on the priority levels of first and second information elements, wherein the first information element includes a first priority level indication and the second information element includes a second priority level indication, as claimed. Rather, the messages of *Hanson et al.* are generated by a Remote Procedure Call (RPC) protocol and they are not generated responsive to, or based on, the first and second information elements (which include first and second priority level indications) from the telemetry device.

C. Regarding Applicants' argument concerning a lack of teaching of the claimed priorities by *Hanson et al.*, the Final Office Action, citing paragraphs [0089] and [0175] of the reference, contends that because "priority is based upon associations, order, sequence, importance, or with respect to another object or event, there is some confusion with respect to the priority of the first and second information elements as claimed. If the priority of the first and second information elements is not with respect to each other or another element, it is unclear how Applicants determine priority."

Applicants' definition of "priority" is no different than that which would be commonly understood by artisans, i.e., that one thing takes precedence over another thing. But, it is not

only that the priority of one information element is greater than another information element. Rather, taking independent claim 1 as exemplary, there is a determination of “whether the first information element includes a first priority level **indication**” (in which case the first information element is stored in a first data structure) and there is a determination of “whether the second information element includes a second priority level **indication**” (in which case the second information element is stored in a second data structure). Then, there is a transmission of first and second messages based on the first and second information elements, “wherein an ordering of transmission is based on the first and second level priority indications.” Thus, it is not some priority relationship between information elements that is important. Rather, it is priority level **indications** that determine whether the first and second information elements are stored in the data structures. **If** the data structures store the first and second information elements, responsive to whether or not there are such priority level **indications**, then, and only then, will there be a transmission of messages based on these information elements, with the order of transmission of the messages based on the first and second level priority **indications**.”

Hanson et al. neither discloses nor suggests such priority level **indications**. The reliance, in *Hanson et al.*, of “association priority,” or “application priority within an association” does not teach or suggest the claimed priority level **indications** within information elements, as claimed. In paragraph [0089] of *Hanson et al.*, priority is configured for a user and the machine on which a user is logged in. At paragraph [0175], priority queues are assigned a weight factor, which is a configuration parameter that is returned by the configuration manager 228 when a Mobile End System 104 to Mobility Management Server 102 is created. Thus, the priority levels in *Hanson et al.* are not related to first and second information elements, wherein a first information element is stored in a first data structure in a telemetry device when it is determined

that the first information element includes a first priority level **indication**, and a second information element is stored in a second data structure in the telemetry device when it is determined that the second information element includes a second priority level **indication**.

D. Responsive to Applicants' argument that the combination of *Duske, Jr. et al.* and *Hanson et al.* is improper, the Final Office Action asserts that since *Hanson et al.* "teaches a system for data communication using a mobility management server to store states and complex session management, para. [0018]" and "Duske teaches an advanced messaging system for initiated mobile terminals that operate without providing excessive loading on a satellite, column 2, lines 30-34," it would have been obvious to **modify *Hanson et al.* with *Duske, Jr. et al.*** "in order to efficiently manage data message transmissions (column 2, lines 41-67). Duske tracks messages and message logs (figure 8-5), where the messages have a status (or priority) and are sent to a queue (figure 8-11)."

First, the statement of the rejection relies on *Duske, Jr. et al.* in view of *Hanson et al.* The rationale in the Final Office Action now appears to be reversing this and trying to modify *Hanson et al.* with *Duske, Jr. et al.*, rather than the other way around. In any event, the modification alleged by the Final Office Action would result, at best, only in some advanced messaging system for initiating the mobile terminals in *Hanson et al.* However, the Final Office Action does not explain why such an "advanced messaging system" would be needed in *Hanson et al.* since the system of *Hanson et al.* already possesses an "advanced messaging system" in using a mobility management server to store states and complex session management. No advantage, not already included in the *Hanson et al.* system, would have been seen by those skilled in the art in modifying *Hanson et al.* to include "an advanced messaging system for initiated mobile terminals that operate without providing excessive loading on a satellite."

Further, the “message transmissions,” alleged to be taught by *Hanson et al.*, would not be more efficiently managed by anything taught by *Duske, Jr. et al.* because the RPC messages of *Hanson et al.* contain the entire network transaction initiated by an application running on an Mobile End System (paragraph [0030]) while the messages in *Duske, Jr. et al.* are not transaction data to be used in maintaining a connection, as in *Hanson et al.*, but are actual messages transported between two mobile terminals. They are two different types of “messages” and the skilled artisan would not have been led to modify any message processing of one system by any teaching of the other system since they are so unrelated. In fact, for the reasons set forth at pages 13-14 of the previous response, *Duske, Jr. et al.* and *Hanson et al.* are directed to non-analogous arts and not combinable within the meaning of 35 U.S.C. § 103.

E. With regard to Applicants’ argument that neither of the applied references discloses the storage of two separate information elements in two separate data structures, the Final Office Action agrees that *Duske, Jr. et al.* does not disclose two such data storage structure, and asserts that this is taught by *Hanson et al.* at paragraph [0089], where messages are stored in corresponding queues, and in paragraph [0175], where priorities are weighted and handled according to their weighting.

However, a review of paragraph [0089] will reveal that it teaches nothing about queues. While paragraph [0175] does refer to “dispatch queues” being processed beginning with the highest priority queue, this is not a teaching of “storing a first information element in a device log in the telemetry device; determining whether the first information element includes a first priority level indication; storing the first information element in a first data structure in the telemetry device when it is determined that the first information element includes the first priority level indication; storing a second information element in the device log; determining whether the

second information element includes a second priority level indication; storing the second information element in a second data structure in the telemetry device when it is determined that the second information element includes the second priority level indication.” That is, the instant claimed subject matter does not merely store two pieces of data having different priorities in two separate data structures. There must also be a determination of whether each of two information elements include priority level **indications** and only when such a determination is positive are those information elements stored in first and second data structures.

At best, the queues in *Hanson et al.* are prioritized by using a weighting factor, thus assigning different priority levels to queues, but there is no disclosure or suggestion in *Hanson et al.* that any information stored within first and second queues were first stored there based on that information including a “priority level indication.”

F. The Final Office Action asserts that *Hanson et al.* “teaches that the RPC protocol engine handles requests to determine where they should be stored and processed **after messages are initially stored in the global queue**” (emphasis added) citing paragraphs [0122], [0123], and [0132]. Thus, the Final Office Action appears to acknowledge that any determination of how requests are to be handled occurs **after** messages are initially stored in the queues. If the messages are already stored in the queue (data storage structure) when determinations are made as to how to further process them, *Hanson et al.* does not teach storing information elements in separate data structures after a determination is made as to whether the information elements include priority level indications, as claimed.

Moreover, even assuming that this modification proposed in the Final Office Action was made, the instant claimed subject matter would not result because neither of the applied references discloses or suggests the claimed feature of storing a first information element in a

first data structure in a telemetry device when it is determined that the first information element includes a first priority level indication, and for teaching the storing of a second information element in a second data structure in the telemetry device when it is determined that the second information element includes a second priority level indication.

The rejection of claims 23 and 25 as obvious under 35 U.S.C. § 103 based on *Duske, Jr. et al.*, *Hanson et al.*, and *Klein* is traversed for the reasons set forth in the previous response.

G. However, responsive to Applicants' argument that there is no suggestion to combine the references in the manner proposed, the Final Office Action asserts, as above, that *Hanson et al.* "teaches a system for data communication using a mobility management server to store states and complex session management, para. [0018]" and "Duske teaches an advanced messaging system for initiated mobile terminals that operate without providing excessive loading on a satellite, column 2, lines 30-34," adding that "Klein teaches that as a check routine is executed upon main power disconnection, the current operating state of the program need not be checked during restoration." The rationale for combining the three references, as set forth at page 7 of the Final Office Action, is "in order to save information in the device if external power fails."

Applicants do not dispute the conventionality of generally storing data in a backup, non-volatile storage facility in case of power loss. However, for the reason given in the previous response, *Duske, Jr. et al.* and *Hanson et al.* are directed to non-analogous arts and are simply not combinable, while *Klein*, directed to power failure recovery in a battery-operated portable device, also constitutes non-analogous art. In addition to failing to provide for the deficiencies of the other two references, *Klein* is merely concerned with a battery-operated portable device, which, upon power failure, provides a technique that allows return to an exact point in a program when

the power is restored. As such, *Klein* would have no applicability, recognized by artisans, that would lead the person of ordinary skill to modify the queues of *Hanson et al.*, in a modified *Duske, Jr. et al.* system, such that the queues (identified in the Final Office Action as the claimed data structures) would be stored in a memory including a device log, when an external power source of the telemetry device fails. That is, where the claimed telemetry device is a mobile terminal, as in *Duske, Jr. et al.* or *Hanson et al.*, in accordance with the claim language, when the power in one of the mobile terminals fails (e.g., a battery is removed or depleted of charge), a plurality of data structure must be stored in a memory including a device log. Since the Final Office Action identifies the queues of *Hanson et al.* as the claimed “data structures,” these queues must be stored upon a power failure. However, the queues of *Hanson et al.* are not even located within the mobile terminal devices, as they are located within the Mobility Management Server (MMS). Therefore, it is technically flawed to assert that the queues with the MMS are to be stored in a memory including a device log, when an external power source of one of the mobile terminals (Mobile End System) fails. A power failure in one of the Mobile End Systems of *Hanson et al.* would have no effect on the queues within the MMS and there would have been no reason to modify the references in order to provide for such a response by the MMS in the event of a power failure of one of the Mobile End Systems.

Therefore, the present application, as amended, overcomes the rejections of record and is in condition for allowance. Favorable consideration is respectfully requested. If any unresolved issues remain, it is respectfully requested that the Examiner telephone the undersigned attorney at (703) 519-9952 so that such issues may be resolved as expeditiously as possible.

To the extent necessary, a petition for an extension of time under 37 C.F.R. § 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account 504213 and please credit any excess fees to such deposit account.

Respectfully Submitted,

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December 15, 2009
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